No. 82-1695

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

ANTHONY ALFARANO

and

JAMES CORNELIUS, JR.

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

1. Whether the time requirements of the Speedy Trial Act, 18 U.S.C. § 3161 (b), are activated by a warrantless arrest following which the arrested parties are released without the formal filing of charges.

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The Petitioners, Anthony Alfarano and James Cornelius, Jr., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on March 9, 1983.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported and classified by the Court as "not recommended for full-text publication", appears in the Appendix hereto. The issues raised herein were addressed by the United States

District Court for the Southern District of Ohio in its "Opinion and Order Denying Defendants' Motion to Dismiss", which opinion was not reported, and appears in the Appendix hereto.

JURISDICTION

The judgment for the Court of Appeals for the Sixth Circuit was entered on March 9, 1983. No petition for rehearing was filed in this case. This petition for a writ of certiorari was filed within sixty days of the date of the entry of the Court of Appeals judgment. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1) and Rule 20.1.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 18:

§ 3161 (b)

> Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for the filing of the indictment shall be extended an additional thirty days.

STATEMENT OF THE CASE

Petitioners were convicted by the United States District Court for the Southern District of Ohio of the crime of receiving stolen property across state lines in violation of 18 U.S.C. § 2315 and 2, the trial court having jurisdiction over federal crimes under 18 U.S.C. § 3231. The conviction in the case was entered in the case by the trial judge, based upon a stipulation of facts between the parties. The convictions were affirmed by the United States Court of Appeals for the Sixth Circuit.

In the chain of events ultimately leading to conviction, Petitioners first came into contact with agents of the Federal Bureau of Investigation on November 1, 1980. Federal agents working as part of an Interstate Crime Unit had set up an undercover fencing operation at an apartment in Sharonville, Ohio. The agents were contacted by Petitioners, who then came to the apartment and agreed to sell some $50,000 of jewelry to the agents at a price far below fair retail value. Unknown to Petitioners, the transaction was monitored by other federal agents outside the apartment.

After the offer to sell was made, federal agents entered the apartment. Petitioners were told to "freeze" and were then searched by being "patted down". The agents seized the jewelry and transported Petitioners to Sharonville Police headquarters in Sharonville cruisers. At the station, Petitioners were questioned by federal agents and the jewelry was inventoried. Petitioners were advised of their *Miranda* rights by the agents. Petitioners were not fingerprinted, photographed or booked at the station, nor were any formal charges or a complaint filed against them. They were not taken before any federal judicial official and were released after a detention of some two or three hours.

A grand jury indictment charging Petitioners with the offense of interstate receipt of stolen property was returned on August 26, 1981, and Petitioners were arrested on that charge on August 27, 1981. Contending that the initial November 1, 1980, encounter with federal agents was an "arrest" within the meaning of the Speedy Trial Act, Petitioners sought a dismissal of the charges on the grounds that the August, 1981, indictment was returned outside the thirty day period set by 18 U.S.C. § 3161 (b). Concluding that the November 1, 1980, encounter was not an arrest within the meaning of the Speedy Trial Act, the United States District Court for the Southern District of Ohio refused to dismiss the action and petitioners were subsequently convicted based upon facts stipulated to the court. The conviction was affirmed by the United States Court of Appeals for the Sixth Circuit, which rejected the speedy Trial Act argument of Petitioners on the same grounds as had the district court.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW, REFUSING TO CONSIDER A WARRANTLESS ARREST AS WITHIN THE SCOPE OF 18 U.S.C. § 3161(b), IS IN CONFLICT WITH ANALOGOUS DECISIONS OF THIS COURT.

The essence of the holding of the trial court is that the November 1, 1980, detention of Petitioners by federal agents did not constitute an arrest within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161 (b) (hereinafter cited as "the Act"). Although the elements constituting an arrest within the meaning of the Act have not as yet been defined by this Court, nor is there any legislative

history to give the term meaning, a review of related concepts leads to the conclusion that the 1980 events did constitute an arrest.

It is axiomatic that an officer can make a warrantless felony arrest only if he has probable cause to believe a felony has been committed. In the case of a federal warrantless arrest, that probable cause would have to indicate that a federal felony had been committed. In the present case, it was found both by the trial court and the Court of Appeals that federal agents did on that November date have probable cause to believe that a federal offense had occurred. It was based on the existence of such probable cause that both courts upheld the seizure of the jewelry involved and the issuance of a search warrant covering other property of Petitioners.

There was no factual question in this case but that Petitioners were detained on November 1, 1980, by federal agents. Both courts below so found and Respondent will concede that Petitioners were not, within that time period, free to leave but were indeed deprived of their liberty until such time as agents concluded their interrogation. Had the answers to petitioners during that questioning been inculpatory, the detention would undoubtedly have ripened into what all parties would have considered an arrest. The question which is present here, however, is whether such detention, based on probable cause, constituted an arrest so as to set in motion the time constraints of the Act.

This Court in *Dunaway* v. *New York,* 442 U.S. 200 (1979), held that both answers and evidence which flowed from an interrogation of a detained subject were subject to suppression just as they would have been had the subject been formally arrested rather than being informally

detained. It was held in that case that since police lacked probable cause to arrest, they likewise lacked sufficient cause to seek inculpatory statements or physical evidence while detaining the subject. This holding essentially equated detention with arrest, saying that in the face of a lack of probable cause, evidence which was seized would be suppressed whether custody was charactarized as an arrest or merely a detention. Conversely, one must conclude that this Court would *not* have ordered the evidence suppressed had the detention been based on probable cause, assuming the requisite warnings and rights of *Miranda* v. *Arizona,* 384 U.S. 436 (1966). Again the result on the issue, i.e., whether or not to suppress the evidence, would have been the same whether the custody was considered as a detention or an arrest.

Most recently, this Court has continued it's refusal to differentiate, for search and seizure purposes, between detention and arrest in *Florida* v. *Royer,* ——— ——— —— U.S. ——, 51 U.S.L.W. 4239 (1983). In quite similar circumstances in *Royer,* it was noted that the contact between police and the defendant was "tantamout to arrest." *Royer, supra* at 4294. Rather than engage painstaking process of defining when detention ripens into arrest, this Court has afforded both instances similar constitutional protection.

The clear implication of *Dunaway* v. *New York* and *Florida* v. *Royer,* is that there is no significance attached, so far as federal rights are concerned, to the label attached to a custodial interrogation. Without trying to define "custody", it can simply be noted that it at least extends to the facts in the present case, which are remarkably similar to *Dunaway and Royer.* A detention based on probable cause, as the one here was found to be, should, on the authority of *Dunaway* and *Royer,* be treated exactly as

would an arrest have been. Given such treatment, the indictment returned against Petitioners in August, 1981, was outside the 30 day time period mandated by the Act and should have been dismissed.

2. THE MEANING OF THE TERM "ARREST" IN THE SPEEDY TRIAL ACT, 18 U.S.C. § 3161(b), IS AN IMPORTANT, RECURRING FEDERAL QUESTION WHICH THIS COURT SHOULD DECIDE.

Given the absence of definitive legislative history, a clear-cut definition in the Act itself, and the lack of this Court's consideration of the issue at this time, it is not surprising that the lower federal courts are having to very frequently face this issue. In addition to the instance case in the Sixth Circuit, the issue has been faced by two other circuit courts and by one district court. In the Eleventh Circuit, the issue arose in *U.S.* v. *Varella,* 692 F.2d 1352 (11th Cir. 1982). The issue has arisen three times in the Eighth Circuit, in the cases of *U.S.* v. *Jones,* 676 F.2d 327 (8th Cir. 1982), cert. den. — U.S. —, 103 S.Ct. 71 (1982); *U.S.* v. *Solomon,* 679 F.2d 1246 (8th Cir. 1982); *U.S.* v. *Boles,* 684 F.2d 534 (8th Cir. 1982). A district court has faced the issues in *U.S.* v. *Padro,* 508 F.Supp. 184 (D. Del. 1981). It has been the uniform holding in every one of these cases that the word "arrest", as contemplated in the relevant section of the Act requires a formal arrest and is inapplicable to warrantless arrests where the subjects are subsequently released. Despite the uniformity of these holdings, it is the contention of Petitioners that the courts have erred in their interpretation of the Act and, in so doing, have done grave damage to the underlying purposes of the Act.

The construction of the Act urged by Respondent, adopted by the courts below and the other courts previously mentioned, makes it possible for federal agents to take the very serious step of detaining persons against their will, all without setting into motion the time constraints of the Act. Following the position urged by Respondent and adopted by the courts below results in the ability of the government to detain persons and then leave tthe matter in limbo for indefinite periods, all the while gaining a substantial advantage as exculpatory evidence fades and inculpatory evidence is gathered by the government. This substantially adds to the advantage which the government always has in a criminal prosecution, that being the assumption by the citizenry, including jurors, that innocent persons are not arrested by the Federal Bureau of Investigation. In addition, it should be noted that during this time, defendants, of whom Petitioners here are typical, must live under the cloud of anxiety caused by the events set in motion by the arrest.

It would appear that, in setting guidelines for implementation and in interpreting the Act, the courts below have placed unfair emphasis on the rights of the government which flow from the Act. Despite jokes to the contrary, the Act is the Speedy "Trial" Act, not the Speedy "Conviction" Act.

> (F)rom the defendant's point of view, delay is not synonymous with due process. A defendant who is required to wait long periods to be tried suffers from a magnitude of disabilities which in no way contributes to his well being . . . . For defendants on pretrial release, the denial of a speedy trial may result in loss of employment or make it impossible to find work; restraints are placed on the accused's liberty, and he may be forced to live under a cloud of anxiety, suspicion, and hostility. The defendant's resources may be

> drained and his associations curtailed. H.R. No. 93-1508 (1974 U.S. Code Cong. & Admin. New 7401, 7408).

In large part, these adverse effects can be seen applicable to the Petitioners and described in the trial court opinion below. Further factual matters not shown in that opinion consist of government instructions not to leave the jurisdiction despite the lack of formal charges and the necessity of undertaking the expense of engaging counsel to participate in dealings with the government.

In the seminal cases resulting in the conclusion that the term "arrest" in the Act requires a formal arrest upon a complaint, a great deal of emphasis has been placed on the fact that the sanctions section of the Act, 18 U.S.C. § 3161 (a) (1), provides only for a dismissal of the charge only as regards a defendant who has been charged in a complaint. It is thus reasoned that if the requirements of § 3161 (b) are activated by a warrantless arrest, then such a right would be without a remedy. To that reasoning is added the logic that Congress would not create a right without a remedy. That combination then leads to the startling conclusion that, therefore, there is no right created by § 3161 (b). See, *U.S.* v. *Jones, supra* at 329.

Petitioners concede that the making of the quantum leap described above is so breathtaking as to virtually defy a refutation. Yet, the conclusion reached by the government is by no means the only one possible. Rather than concluding that there is no right because the Act creates no remedy, it is equally plausible that Congress has created a right but has overlooked the creation of a remedy. " (W) here federally created rights are involved, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant relief." *Bell* v. *Hood,*

327 U.S. 678, 684 (1945). Indeed, it is only through the creation of such a remedy that this Court can prevent government agents from thwarting the intent of Congress. It was the finding of Congress in the passage of the Act that the interests of every party – the accused, the government, the courts, society – would best be served by the expeditious treatment of criminal matters. Now the interpretation of the Act which has been urged by the Respondent and adopted by the courts below has created a way by which the government may circumvent the mandate of the act if it so desires – simply by setting the process in motion without the filing of a complaint. In so doing, the balance set by Congress among the competing interests has been upset, to the great detriment of Petitioners herein and to the society served by Congress as well. Petitioners urge this Court to restore the balance which was struck by Congress by creating a remedy to redress the wrong which has been done.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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APPENDIX

Nos. 82-3045, 82-3046

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY ALFARANO

and

JAMES CORNELIUS, JR.,

Defendants-Appellants.

ORDER

(Filed March 9, 1983)

Before: MARTIN and WELLFORD, Circuit Judges; and PECK, Senior Circuit Judge.

Anthony Alfarano and James Cornelius appeal their convictions for receiving stolen property across state lines in violation of 18 U.S.C. §§ 2 and 2315.

As part of a joint federal and local law enforcement organization, Interstate Crime Unit agents rented an apartment in Sharonville, Ohio to set up a "sting" operation for the recovery of stolen goods. Two undercover agents

met the appellants in the apartment on November 7, 1980, upon appellants' request. The appellants intended to sell approximately $50,000 worth of jewelry, some with original jeweler tags and in original sample cases. The exchange, unknown to the appellants, was being tape recorded on equipment located outside the apartment.

In the course of the exchange, the appellants indicated they had "checked out" Bloomfield whom they trusted as a dealer in "hot" or stolen goods. Bloomfield was in fact a jewelry executive cooperating with the ICU as a "cover" for the operation. The appellants also advised the undercover agents not to sell the jewelry in the New York/New Jersey/Philadelphia area because it had come from there. After some bargaining, the appellants and the undercover agents agreed on a sale price of $11,000, less than one quarter of the jewelry's actual and apparent value. As soon as the money had changed hands, ICU officers entered the apartment and ordered the occupants to "freeze." While some officers "patted down" the appellants, others seized the jewelry and additional items in the apartment.

The appellants consented to travel in Sharonville police cruisers to the Sharonville police station to inventory the items seized. They were given *Miranda* warnings before any questions were asked. On that occasion, the appellants were never fingerprinted, photographed, charged or "booked." The inventory of the jewelry lasted a few hours after which the appellants were released.

Over the subsequent six months government prosecutors attempted to develop additional evidence against the appellants. Although progress was difficult, ultimately the appellants' jewelry was identified as proceeds from a $200,000 burglary of a Pennsylvania jewelry store. Other evidence included testimony of a third party to whom appellants confided that they knew the jewelry was stolen.

The principal contention of the appellants is that their motion to dismiss should have been granted according to the Speedy Trial Act, 18 U.S.C. § 3161. The Speedy Trial Act argument hinges on two factors. The defendants must demonstrate that their rights under the STA attach upon arrest. Second, they must show that they were in fact arrested. Section 3161 (b), the meat of the STA reads:

> Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons *in connection with such charges.* If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(emphasis added). The Speedy Trial Act Implementation Plan of the Southern District of Ohio, Section III, begins computation of the thirty days when the "person (i) is held in custody solely for the purpose of responding to a *federal charge;* (ii) is delivered to the custody of a federal officer in connection with a *federal charge;* (iii) is before a judicial officer in connection with a *federal charge.*" (emphasis added). In *United States* v. *Hillegas,* 578 F.2d 453 (2d Cir. 1978), the court found that the purpose of the STA was to expedite pending criminal proceedings but that the STA would not affect the prosecutor's discretion and time to investigate before filing charges. We conclude that the STA is triggered "if an individual is arrested or served with a summons *and the complaint charges an offense.*" Southern District of Ohio Speedy Trial Act Implementation Plan. (emphasis added).

Defendants were not charged with an offense, federal or otherwise, until August of 1981. Even if a charge had been

filed against appellants but subsequently and promptly dropped in good faith by the government, section 3161 (b) of the STA does not apply. *United States* v. *Jones,* 676 F.2d 327 (8th Cir. 1982). Neither the STA nor the Sixth Amendment rights of appellants apply to the time between a criminal occurrence and a subsequent formal charge of wrongdoing. *United States* v. *MacDonald,* — U.S. —, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982); *United States* v. *Marion,* 404 U.S. 307 (1971).

Furthermore, the appellants failed to show that the United States deliberately delayed the indictment to gain an unconscionable advantage. In fact, appellants have not shown any prejudice as a result of the delay; they were fully aware that they were prime suspects of the investigation at all times prior to their indictment.

The appellants also complain that they were not furnished with one tape of the apartment conversation in violation of their fifth amendment rights to a fair trial. The record indicates, to the contrary, that their counsel were afforded adequate access to the tape. The trial judge offered appellants at the suppression hearing and again before trial an opportunity to hear and examine the tape. We find no prosecutorial misconduct before or during the trial which might indicate that appellants were denied fundamental rights to a fair trial.

Additionally, the appellants appeal from the district court's denial of their motion to suppress the jewelry and other evidence. They assert that the warrantless seizure was without probable cause in violation of their fourth amendment rights. Facts which led ICU agents to believe the jewelry was stolen abounded: appellant transported $50,000 worth of jewelry in a pillowcase, a brief case, and a plastic bag; original price tags still marked the jewelry;

and the conversation between the appellants and undercover agents established that the jewelry was "hot." The appellants' motion to suppress was properly denied because officers had probable cause to believe the jewelry had been stolen.

Appellants make several other arguments on appeal. We have carefully considered the arguments and find them to be without merit.

The judgment of the district court is affirmed.

ENTERED BY ORDER
OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NO: CR-1-81-75-1

UNITED STATES OF AMERICA,

v.

ANTHONY ALFARANO

and

JAMES CORNELIUS, JR.,

OPINION AND ORDER DENYING DEFENDANTS' MOTION TO DISMISS

(Filed November 24, 1981)

SPIEGEL, J.:

This matter came on for consideration of defendants' motion to dismiss on the grounds of denial of defendants' rights to a speedy trial under the Constitution and 18 U.S.C. § 3161 (b) (doc. 6), the response of the United States (doc. 11), the defendants' reply thereto (doc. 19), evidence at the hearing, the defendants' post-trial brief (doc. 25), and the United States' post-hearing memorandum (doc. 26). For the reasons hereinafter stated, it is the conclusion of the Court that defendants' motion is not well taken and should be denied.

Defendants were detained by federal agents on November 1, 1980, at the time they attempted to sell certain jewelry to an ICU undercover fencing operation in Sharon-

ville, Ohio. The defendants had initiated the transaction and brought the jewelry to an apartment used by the ICU as a front for an undercover fencing operation. While the defendants were in the process of negotiating with undercover agents for the purchase of the jewelry, it became evident that the jewelry was probably stolen. FBI agents who were monitoring the transaction with radio transmissions and tape recordings, thereafter "raided" the apartment. The defendants disclaimed any interest in the jewelry to the FBI. After being patted down, they were transported to the Sharonville Police Station in Sharonville police cruisers, where the jewelry was to be inventoried by the FBI. While at the station, they were interviewed and were present at the inventory of the jewelry, and were then released without any charges being filed against them.

The Court finds that the defendants were not handcuffed at any time, that they were transported separately in Sharonville police vehicles, that they were not refused the right to call an attorney, and having observed the defendants when they testified, the Court finds portions of their testimony not to be credible.

There is no doubt that the defendants were detained for two to three hours by the FBI, both in the apartment and at the Sharonville Police Station, while they were being interviewed and the jewelry was inventoried, and that they were given *Miranda* warnings by one of the FBI agents. It is also undisputed that the defendants were not fingerprinted, photographed or booked, and no charges were placed against them, and that they were released. They were informed that the matter would be presented to a grantd jury at some later date.

The Court further finds that on November 1, 1980, the evidence was inconclusive as to whether a federal offense

had been committed by the defendants, and it was necessary to conduct a lengthy investigation to determine whether the jewelry was stolen, if so, from whom, and when, and how it got in the possession of the defendants; and it was reasonable for the ICU agents to transport the defendants to the Sharonville Police Station by vehicles other than those used by the ICU so as not to devulge the existence of the undercover operation or the cars used by the undercover agents.

The Court further finds that there is no doubt that the defendants were concerned about the seizure of the jewelry and not knowing what was going to happen to them as a result, which may have affected their relations with their families, businesses, as well as their own well being. However, the Court finds that no tactical advantage was achieved by the Government in relation to the defendants by any delay in presenting this case to the federal grand jury Neither were defendants prejudiced in their ability to present an adequate defense in this action. Such advantage as the Government may have achieved by delaying the presentation of this matter to a federal grand jury in order not to destroy the elaborate undercover operation which the Interstate Crime Unit had established involving the lives and safety of federal, state and local police officials, as well as a substantial expense, has not disadvantaged the defendants. There is therefore no valid constitutional claim and defendants' motions could be granted only if there was a violation of defendants' statutory rights under 18 U.S.C. § 1361 (b). *See United States* v. *Marion,* 404 U.S. 307 (1971).

There is no doubt that the defendants were detained, and there is no doubt that they considered themselves under arrest and were apprehensive. However, in fact,

they were advised they were not under arrest and were not charged with the crime, so that the Court concludes that the provision of the Speedy Trial Act, 18 U.S.C. § 3161 (b) is not applicable. Under the rules adopted by the United States District Court for the Southern District of Ohio for implementation of the Speedy Trial Act, section 3161 (b) is triggered "if an individual is arrested or served with a summons *and the complaint charges an offense*" (emphasis added). In that circumstance, "any indictment or information subsequently filed *in connection with such charge* shall be filed within 30 days of arrest or service" (emphasis added). Without a charge, therefore, the Speedy Trial Act is not triggered.

The position of the Courts of the Southern District is supported by the United States Court of Appeals for the Second Circuit. In *United States* v. *Hillegas,* 578 F.2d 453, 457 (2d Cir. 1978), the Court discussed the purpose of the Speedy Trial Act and stated:

> The policy and purpose of the Act (Speedy Trial Act) and of all these speedy trial plans, including the Current Plan, have been to expedite the processing of *pending* criminal proceedings, not to supervise the exercise by a prosecutor of his investigative or prosecutorial discretion at a time when no criminal proceeding is pending before the court. Indeed, to invade the latter area might well involve the legislative and judicial branches in matters that fall primarily, if not exclusively, within the jurisdiction of the executive branch under Article 2, § 3 of the Constitution, which provides that the President "shall take Care that the Laws be faithfully executed."
>
> By the same token, neither the Act nor the Plans were intended to impose time limits in addition to those provided for by the Constitution with respect to Government investigations undertaken while the defen-

dant is not the subject of formal proceedings. Thus, to the extent that the Act and Current Plan seek to implement the accused's constitutional right to a speedy trial, we are constrained by the admonition of the Supreme Court that "it is either a formal indictment or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the Speedy Trial provision of the Sixth Amendment," *United States* v. *Marion*, 404 U.S. 307, 320 .... (1971). When charges are pending against him, the accused may face restraints, including undue and oppressive incarceration, anxiety and concern attributable to the pending public accusation, interference with his freedom of movement even though he is released on bail, possible disruption of his employment, public obloquy, and the draining of his time and financial resources in the preparation of his defense. For these reasons he is entitled to a prompt disposition of the charges against him. The line is drawn, however, at the point where charges are actually pending against an individual. Although a person under investigation may suffer some apprehension or anixety, his guarantee against preprosecutorial delay lies solely in the applicable statute of limitations and the Fifth Amendment's Due Process Clause. Only if he can show the Government failed to obtain an indictment against him before the expiration of the applicable statute of limitations or that the Government's delay violates "fundamental conceptions of justice," resulting in substantial prejudice to him, may he obtain a dismissal of the indictment based on delay at a time when no charges against him were pending. *United States* v. *Lovasco*, 431 U.S. 783 ... (1977).

Therefore, section 1361(b) of the Speedy Trial Act would only have been triggered by an arrest and a charge against the defendants. If we were to characterize the detention of defendants as an arrest and charge so as to trigger

the Speedy Trial Act, then their release on November 1, 1980 without being fingerprinted, booked or formally charged, must be characterized as a dismissal of the charge so that the time between the dismissal of the *de facto* charge and the presentation of the evidence to the grand jury would be excludable under 18 U.S.C. § 3161 (d) (1).

It is clear to this Court that the intent of the Speedy Trial act is to exclude from the time limits imposed by the Act, any period of time during which a defendant is not under charges. It is not entended to prevent the Government from making a full investigation before presenting evidence to the Grand Jury, and it specifically allows the government to dismiss charges already filed and then re-indict at some later time without any time restraints. If the Government can drop charges and re-file without running afoul of the Act, the Court can find nothing improper in the Government detaining these defendants for a short period of time, releasing them without filing any charges, and then indicting them ten months later.

Defendants have not strongly pressed their constitutional claim and have conceded that this motion is based on the Speedy Trial Act and not the Constitution. We find, however, that no prejudice to the defendants or bad faith on the part of the Government has been demonstrated so as to require dismissal under the Constitution. We also find that the time limits imposed by the Speedy Trial Act do not apply to the circumstances of this case.

Accordingly, defendants' motion to dismiss should be denied.

It is Ordered that defendants' motions to dismiss are DENIED.

SO ORDERED.

/s/ S. ARTHUR SPIEGEL
United States District Judge